Evidence: Foundation & Objections

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- Law librarian in New York City for 40 years
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- Law degree at University of Missouri at Kansas City
- Master's in Science from Columbia University School of Library Service
- Published more than 200 articles in the areas of library management and research, including New York Law Journal and New York State Bar Journal
- Frequent speaker at CLE and professional events

Researching NY Evidence Highlights

- Overview of tips & tricks
  - Overall structure
  - Article organization
  - Practical research & application differences
- Roadmap
  - Secondary sources
  - Primary sources – Statutes, rules & case law
  - Evaluate
  - Apply
  - Practical & ethical consideration
  - Organize findings
- Common pitfalls

Resources
New York State & Federal

- Print publications
- Lexis online publication
- Westlaw online publications
- Bloomberg online publications
- New York Court online publications
- Federal Court online publication
- Examples of useful practical resources
- Free/low case primary law options

WARNING

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Evidence:
Foundation & Objections

Research tools for New York State & Federal Evidence Issues

Nathan Aaron Rosen

Print resources

New York State

- Prince, Richardson on Evidence by Richard Farrell, 11th ed. With 2008 Cumulative Supplement.
- Canudo on Evidence Laws of New York by Gary Shaw. 2018. LexisNexis. https://store.lexisnexis.com/en-us/products/canudo-on-evidence-laws-of-new-york-grpussku64721.html
- New York Evidence Handbook with Common Objections & Evidentiary Foundations by John Barkai. 2021, updated 2025. https://a.co/d/fD3e8WN
- New York Evidence with objections, 5th ed. NITA & Aspen. 2018. https://aspenpublishing.com/products/nita-griffin-nyevidence5 https://www.nita.org/s/product/new-york-evidence-with-objections-fifth-edition/01t4W00000DAOBXQA5
- New York Guide to Evidence by Mike Franken. 2025. https://a.co/d/gSZspvb
- Foundation Evidence, Questions and Courtroom Protocols by Edward Davidowitz & Robert Dreher, Fifth Ed. 2014 NYSBA https://nysba.org/products/foundation-evidence-questions-and-courtroom-protocols-fifth-ed-print-ed/
- New York Objections. James Publishing, 2024. LexisNexis https://store.lexisnexis.com/en-us/products/new-york-objections-grpussku-us-ebook-07168-epub.html https://jamespublishing.com/product/new-york-objections/

- New York Evidence Handbook, 3rd ed by Michael Martin & Daniel Capra. Wolters Kluwer. 2025. https://law-store.wolterskluwer.com/s/product/new-york-evidence-handbook-3e-misb/01t0f00000My7NwAAJ
- New York Motions in Limine: Evidence Exclusion Guide by Julie Baker & David Finley. Thomson Reuters, 2025 https://store.legal.thomsonreuters.com/en-us/products/trg-federal-motions-in-limine-full-set-30921213
- New York Evidence Proof of Cases by Gabriel Mottla. 2024-2025 ed. Thomson Reuters. https://store.legal.thomsonreuters.com/en-us/products/proview-ny-evidence-proof-of-cases-sub-41805493
- Weinstein, Korn & Miller, New York Civil Practice: CPLR Vol. 9, Article 45 - Evidence. Matthew Bender.
- Evidence in New York State and Federal Courts. New York Practice, Vols. 5 & 5A, 2024-25. Thomson Reuters. https://store.legal.thomsonreuters.com/en-us/products/ny-practice-v5-and-5a-evidence-in-ny-state-and-federal-courts-full-set-30920548

Federal

- Weissenberger's Federal Evidence by James Duane & Glen Weissenberger, 8th ed. 2026. Matthew Bender. https://store.lexisnexis.com/en-us/products/weissenbergers-federal-evidence-grpussku45089.html
- McCormick on Evidence. 2025. Thomson Reuters. https://store.legal.thomsonreuters.com/en-us/products/proview-plus-print-mccormick-evidence-practitioners-edition-set-30921042
- Weinstein's Federal Evidence by Mark Brodin, 2nd ed. Matthew Bender. https://store.lexisnexis.com/en-us/products/weinsteins-federal-evidence-grpussku10537.html
- Practitioner's Deskbook on Evidence by Martin A. Schwartz. Updated October 2025. https://www.pli.edu/catalog/publications/treatise/practitioners-deskbook-on-evidence/417864
- Federal Rules of Evidence With Trial Objections by Charles Gibbons, Saa Farley. 2023-2024 ed. Thomson Reuters. https://store.legal.thomsonreuters.com/en-us/products/proview-federal-rules-of-evidence-with-trial-objections-2023-2024-entitlement-43242911
- Handbook of Federal Evidence by Michael Graham. 2025 ed. Thomson Reuters. https://store.legal.thomsonreuters.com/en-us/products/proview-plus-print-handbook-of-federal-evidence-graham-set-30920738

- Courtroom Handbook On Federal Evidence by Olin Wellborn & Steven Goode. 2025 ed. Thomson Reuters. https://store.legal.thomsonreuters.com/en-us/products/proview-plus-print-courtroom-handbook-on-federal-evidence-set-30920352
- Federal Evidence by Christopher Mueller & Laird Kirkpatrick. 2025. Thomson Reuters. https://store.legal.thomsonreuters.com/en-us/products/federal-evidence-full-set-30920598
- Federal Rules of Evidence by Paul Rothstein. 2025. Thomson Reuters. https://store.legal.thomsonreuters.com/en-us/products/proview-plus-print-federal-rules-of-evidence-set-30920625
- Federal Rules of Evidence with Cues and Signals for Good Objections by Deanne Siemer. 5th Edition. 2024 NITA. https://www.nita.org/s/product/federal-rules-of-evidence-with-cues-and-signals-for-good-objections-5th-edition/01tUm0000093CCLIA2
- Evidentiary Foundations by Edward Imwinkelried, 13th ed. 2024. Matthew Bender. https://store.lexisnexis.com/en-us/products/evidentiary-foundations-grpussku42175.html
- Evidentiary Foundations for Government Attorneys manual by the National Attorneys General Training and Research Institute. https://www.naag.org/publication/evidentiary-foundations-for-government-attorneys-manual/
- Federal Evidence Practice Guide by Joseph McLaughlin. Matthew Bender. https://store.lexisnexis.com/en-us/products/federal-evidence-practice-guide-grpussku10451.html
- Trial Evidence Foundations by Gordon Cleary & John Tarantino. James Publishing. https://jamespublishing.com/product/trial-evidence-foundations/
- Federal Rules of Evidence: Trial Tactics, Strategic Checklists, Flowcharts, and Practical Tools for Courtroom Success. JurisAtlas Publishing, 2025. https://a.co/d/i75To2T

Lexis resources

New York State

- New York Evidence – Proof of Cases. 2025

Federal

- American Jurisprudence Trials – Evidence – various topics covered.
- Evidentiary Foundations by Edward Imwinkelried, 13th ed. Matthew Bender, 2025.
- Federal Evidence Practice Guide by Joseph McLaughlin. Matthew Bender, 2025.
- Federal Rules of Evidence Manual by Stephen Saltzburg, Michael Martin, David Capra, & Jessica Berch. Matthew Bender, 2025.
- Trial Objections by Regge Dunn. James Publishing, 2025.
- Weinstein's Federal Evidence by Mark Brodin, 2nd ed. Matthew Bender.
- Weissenberger's Federal Evidence by James Duane & Glen Weissenberger, 8th ed. Matthew Bender.

Westlaw resources

New York State

- Evidence in New York State & Federal Courts--New York Practice Series by Robert Barker & Vincent Alexander. 2025 ed.
- New York Evidence Proof of Cases. 2025.

Federal

- Courtroom Handbook on Federal Evidence by Steven Goode & Olin Wellborn. 2025.
- Federal Evidence by Christopher Mueller & Laird Kirkpatrick. 2025.
- Federal Rules of Evidence by Paul Rothstein. 2025.
- Federal Trial Objections by Charles Gibbons & Sara Holland. 8th ed. 2023.
- Handbook of Federal Evidence by Michael Graham, 2025 ed.
- Jones on Evidence by Clifford Fishman & Anne McKenna. 2025.
- McCormick on Evidence, 9th ed. 2025.
- Trial Objections Handbook by Roger Park, Aviva Orenstein & Colin Miller. 2025.

Other resources

Bloomberg

- American College of Trial Lawyers Handbook of Electronic Evidence, 2023 update. American College of Trial Lawyers.
- Attorney-Client Privilege and the Work Product Doctrine, 6th ed 2017. American Bar Association.
- Electronic Evidence: Law and Practice, 2nd ed 2008. American Bar Association.
- Federal Trial Evidence, 2009. James Publishing
- Fifty-State Survey: Daubert v. Frye- Admissibility of Expert Testimony, 2016. American Bar Association.
- New York Objections, 24th revision by Justice Gerald Lebovits. 2024. James Publishing.
- Qualifying and Attacking Expert Witnesses by David J. Galluzzo. 2021. James Publishing.
- Spoliation of Evidence: Sanctions & Remedies for Destruction of Evidence in Civil Litigation, 2013. American Bar Association.
- Trial Objections by Rogge Dunn. 2018. James Publishing.

New York Court

- Guide to New York Evidence by the NY Unified Court System Committee on Criminal Jury Instructions, Model Colloquies, & Evidence Rules. https://www.nycourts.gov/judges/evidence/
- History of the Guide to NY Evidence - https://www.nycourts.gov/judges/evidence/0-TITLE_PAGE/HISTORY/Guide-History.shtml

Federal Court

- Background on the Federal Rules of Evidence by Federal Judicial Center. https://www.fjc.gov/history/work-courts/rules-federal-rules-evidence

Examples of useful practical resources

- Commonly Used Objections FRE.
- Differences Between New York Evidence & Federal Evidence Rules by Stephen Ferrante, Nov 15, 2022.
- Evidentiary Objectionss Cheat Sheet (NY) Practical Guidance, LexisNexis.
- Objections at Trial Cheat Sheet (NY). Practical Law Thomson Reuters.

Free / Low-Cost Primary Law Options

- New York State Bar Association members – free access to Fastcase - https://nysba.org/attorney-resources/vlex-fastcase-legal-research/
- Justia - https://www.justia.com/
- Google Scholar – https://scholar.google.com/
- Findlaw - https://caselaw.findlaw.com/
- New York City Bar Association Library provides Lexis and Westlaw with access to federal and all states statutes, cases, administrative decisions, and most New York treatise material.

Case Law Full Text and Digests

- Full-text case law services:
    - Westlaw, Lexis, Bloomberg as primary tools to pull cases applying specific evidence rules and to filter by jurisdiction, court level, and date.
- Topic/digest systems:
    - West Key Number System for "Evidence" topics to locate clusters of cases interpreting a given rule (e.g., relevance, hearsay, experts) and then narrow to your jurisdiction.

Citators – Making sure your citations are still valid

- KeyCite (Westlaw) and Shepard's (Lexis) to confirm that evidence cases and rule interpretations are still good law and to find later cases applying or distinguishing them.

Overview of tips and tricks in research evidence

in New York and Federal

New York's evidence law is broadly similar in structure and many core doctrines to the Federal Rules of Evidence, but it is not a codified clone and diverges in important ways on source, structure, and several recurring doctrines.

Overall Structure and Source of Law

- **Federal:** The FRE are a legislative codification enacted by Congress, organized into ten articles (101–1107) covering general provisions, judicial notice, presumptions, relevance, privileges, witnesses, opinions/experts, hearsay, authentication, and contents of writings.

- **New York:** New York does not have a single statutory evidence code; its law of evidence is largely common-law and scattered across cases, CPLR provisions, criminal procedure statutes, and other enactments.

  - Guide to NY Evidence (GNYE): The Unified Court System's Guide is a judicially developed restatement that pulls together existing NY evidence law; it is not a statute, but its rules track Court of Appeals and statutory authority.

    ". . The GNYE is not intended to alter the existing law of New York evidence and shall not be construed as doing so or as precluding change in the law when appropriate." GNYE rule 1.02, Purpose and Construction."

    https://www.nycourts.gov/judges/evidence/

  - A Code of Evidence for The State of New York. New York State Law Revision Commission, 1992. https://www.nycourts.gov/JUDGES/evidence/0-TITLE_PAGE/RESOURCES/1991_Proposed__NY_Code_of_Evidence.pdf

- Comparison of the Federal Rules of Evidence (FRE) & Guide to NY Evidence (GNYE) https://www.nycourts.gov/JUDGES/evidence/16-INDEX.FRE-GNYE.shtml

Article Organization and Scope

- **Parallel articles**: To facilitate comparison, the first ten articles of the GNYE are structured to mirror the ten FRE articles (e.g., Article 1 General Provisions, Article 4 Relevance, Article 8 Hearsay), using similar headings and sequence.

- **Additional NY articles**: GNYE adds, for example, Article 12 “Appellate Review,” addressing preservation of evidentiary error and review standards—something not contained as an “article” in the FRE.

- **Breadth**: The GNYE includes more rules and finer-grained topics than the FRE, reflecting New York’s extensive common-law development (including niche subjects like hypnosis of witnesses and various specialized doctrines).

Practical Research and Application Differences

- **Federal research**: FRE research typically begins with the rule text and advisory committee notes, then federal case law interpreting those rules, with a relatively uniform national structure.

- **NY research**: New York evidence research often requires weaving together GNYE rule text, Court of Appeals and Appellate Division decisions, CPLR provisions, and occasionally criminal procedure and other statutes; the GNYE is a guide and synthesis, not a binding code.

- **Comparison tool**: The GNYE site includes a specific comparison of FRE and GNYE rules, signaling where New York’s formulation or scope diverges from the federal model.

Roadmap

Start with Secondary Sources on Evidence

- Consult evidence treatises and practice guides to get an overview (e.g., federal or state evidence treatises, pattern trial practice guides).
- Use legal encyclopedias, law review articles, and bar CLE materials for definitions, policy rationales, and leading cases on the specific doctrine (e.g., prior bad acts, expert reliability).
- From these sources, extract: key rule numbers, recurring factors/tests, and citations to seminal cases and statutory provisions.

Primary Authority: Statutes and Rules

- Pull the evidence rules and any related statutes (e.g., state-specific expert statutes, privilege statutes, special evidentiary provisions).
- Check annotations and practice commentaries to find cases applying each rule to similar fact patterns.
- Confirm all text is current; note amendments, commentary, and legislative history if interpretation is disputed.

Research Primary Authority: Case Law

- Use rule-based searches (e.g., rule number plus key issue terms) to find leading and recent decisions in the governing jurisdiction.
- Prioritize:
    - High court and intermediate appellate decisions.
    - Trial-level opinions with detailed evidentiary analysis in analogous fact
- Extract and organize elements or multi-factor tests, burdens (production/persuasion), standards of review, and recurring factual distinctions.

Evaluate "Good Law" and Conflicts

- Shepardize/KeyCite all key cases and statutes to ensure they are still valid and not overruled, limited, or distinguished on relevant grounds.
- Note any splits:
    - Between jurisdictions on the same evidentiary doctrine.
    - Within the jurisdiction (conflicting panels or lines of cases).

Apply Law to Evidence in Your Case

- Carefully articulate the **key facts** about the evidence: how it was obtained, who will offer it, in what form, and for what purpose.
- Run the facts through the admissibility framework: relevance, reliability/trustworthiness, legality of acquisition, authentication, and potential prejudice or policy

Research Practical and Ethical Considerations

- Review practice guides and CLE materials on local courtroom practices, judge-specific evidence preferences, and motion in limine strategies.
- Check ethics and professional responsibility sources for issues such as spoliation, disclosure obligations, and handling potentially inadmissible but discoverable material.
- Consider administrative or regulatory overlay where relevant (e.g., forensic labs, chain-of-custody protocols, agency-specific evidentiary standards).

Organize Findings into a Work Product

- Create a structured memo or outline keyed to each evidentiary sub-issue, with sections for facts, governing rules, leading authorities, application, and open questions for further research or clarification.
- Include a short checklist for admissibility of each category of evidence you expect (documents, digital evidence, physical items, expert opinions, lay observations)
- Maintain a research trail log listing sources searched, terms used, and databases consulted to avoid duplication and to update research later.

Common pitfalls specific to researching evidence rules

with practical ways to avoid each

Over-reliance on Secondary Sources

Pitfall	How to avoid
Leaning too heavily on outlines, treatises, blogs, or CLEs and never working through the rule or text.	Use secondary sources only to map the landscape, then read the actual rule, commentary, and leading cases, and confirm they are still good law.

Not Reading the Full Rule (and Cross-References

Pitfall	How to avoid
Focusing on the "headline" rule (e.g., 404(b)) and overlooking definitions, exceptions, or cross referenced rules (e.g., 403, 105, 609).	When a rule is implicated, read the full article or cluster (e.g., 401–403 for relevance, 801–807 for hearsay, 701–705 for experts) plus any official commentary

Using Outdated or Overruled Authorities

Pitfall	How to avoid
Relying on pre amendment cases or superseded interpretations of hearsay, experts, or 403	Always KeyCite/Shepardize rules and key cases; check amendment notes and more recent decisions, especially after major rule changes (e.g., expert standards)

Shallow Case Law Reading

Pitfall	How to avoid
Citing headnotes or "similar facts" from a summary without analyzing the actual holding, dicta, or procedural posture.	Read the full opinion sections on admissibility, identify the rule applied, the standard of review, the factual distinctions, and how the court weighed 403 or similar tests.

Confirmation Bias in Authority Selection

Pitfall	How to avoid
Cherry picking cases that support your theory and ignoring adverse or nuanced authorities on the same rule.	Deliberately search both pro admissibility and pro exclusion lines, review negative history and contrary decisions, and address them explicitly in your notes.

Poor Organization of Research Notes

Pitfall	How to avoid
Mixing rules, cases, and facts in unstructured notes that you cannot use for motions, trial, or appeal.	Structure notes by rule and sub issue (e.g., 401–403, 404(b), 608–609, 702, 803(6)), with separate sections for black letter law, leading cases, fact patterns, and strategic angles.